

## § 201.23

## 24 CFR Ch. II (4–1–03 Edition)

(10) After a thorough credit investigation and in the absence of information to the contrary, the lender may rely upon all statements of fact made by the borrower or any co-maker or cosigner in a credit application.

(b) *Income requirements.* (1) For any Title I loan, the credit application and review must establish that the borrower's income will be adequate to meet the periodic payments required by the loan, as well as the borrower's other housing expenses and recurring charges. For a borrower's income to be considered adequate, housing expenses and total fixed expenses generally may not exceed maximum percentages of effective gross income established by the Secretary. If these expense-to-income ratios are exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of compensating factors concerning the borrower's creditworthiness that support approval of the loan.

(2) In determining whether the borrower's income is adequate, the following definitions are applicable:

(i) *Effective gross income* is defined as continuing income from all sources that is reasonably expected to be available during the first two years of the loan obligation, without any deduction for income taxes or other items.

(ii) *Total fixed expenses* is the sum of the borrower's housing expenses and other recurring charges.

(iii) *Housing expenses* includes all payments for principal, interest, loan or mortgage insurance charges, ground rent or leasehold charges, real estate taxes, hazard insurance, and homeowners association or condominium fees, but does not include utility costs.

(iv) *Other recurring charges* include all payments on automobile loans, furniture loans, student loans, installment loans, revolving charge accounts, alimony or child support, and any other debt for which the obligation is expected to continue for six months or more.

(c) *Evidence of delinquency, default or misrepresentation.* Except with the prior approval of the Secretary the lender shall not approve a loan if the lender has knowledge of any of the following circumstances:

(1) The borrower is past due more than 30 days as to the payment of principal or interest under the original terms of a loan obligation owed to or insured or guaranteed by the Federal Government, unless the debt has since been discharged or satisfied; or

(2) The borrower has previously made material misstatements of fact on applications for loans or other assistance.

(Approved by the Office of Management and Budget under control number 2502-0328)

[50 FR 43523, Oct. 25, 1985, as amended at 51 FR 32060, Sept. 9, 1986; 54 FR 10537, Mar. 14, 1989; 56 FR 52431, Oct. 18, 1991; 57 FR 6480, Feb. 25, 1992; 61 FR 19797, May 2, 1996]

### § 201.23 Borrower's initial payment.

(a) *General requirement.* The borrower shall be responsible for the payment in cash of any costs that will not be paid, or are not eligible to be paid, from the proceeds of the loan. Such costs payable by the borrower may include any required downpayment, any discount points to be paid by the borrower to the lender, any other fees and charges that may not be financed, and any other costs in excess of the loan amount. No part of such costs payable by the borrower may be loaned, advanced, or paid to or for the benefit of the borrower by the dealer, the manufacturer, or any other party to the loan transaction. If the borrower obtains all or any part of such costs through a gift or a loan from some other source, the borrower must disclose the source of such gift or loan on the credit application. Any such loan must be secured by property or collateral owned by the borrower independently of the property securing repayment of the Title I loan, unless the prior approval of the Secretary is obtained for an exception to this requirement. The lender shall consider any such loan obligation in performing the credit investigation. Documentation of any initial payment shall be retained by the lender in the loan file.

(b) *Manufactured home purchase loans.* In the case of a manufactured home purchase loan, the borrower shall make a minimum cash downpayment of at least five percent of the purchase price of the home. The borrower's equity in an existing manufactured home and any movable appurtenances may be

traded-in on a new home and accepted in lieu of full or partial cash downpayment, but without any cash payment to the borrower. The existing manufactured home being traded-in shall be clearly identified, and the borrower's equity in the home shall be based upon the retail value of the home and appurtenances (as determined by a HUD-approved appraisal), less the total of all loans outstanding on the home and appurtenances.

(c) *Manufactured home lot loans.* In the case of a manufactured home lot loan, the borrower shall make a minimum cash downpayment of at least five percent of the total of the purchase price and development costs for the lot.

(d) *Combination loans.* In the case of a combination loan, the borrower shall make a minimum cash downpayment of at least five percent of the purchase price of the manufactured home and lot. If the borrower already owns a manufactured home or a lot on which a manufactured home is to be placed, the borrower's equity in such home or lot may be accepted in lieu of full or partial cash downpayment on a combination loan, but without any cash payment to the borrower.

[61 FR 19798, May 2, 1996]

#### § 201.24 Security requirements.

(a) *Property improvement loans—(1) Property improvement loans in excess of \$7,500.* (i) Any property improvement loan in excess of \$7,500 shall be secured by a recorded lien on the improved property. The lien shall be evidenced by a mortgage or deed of trust, executed by the borrower and all other owners in fee simple.

(ii) If the borrower is a lessee, the borrower and all owners in fee simple must execute the mortgage or deed of trust. If the borrower is purchasing the property under a land installment contract, the borrower, all owners in fee simple, and all intervening contract sellers must execute the mortgage or deed of trust.

(iii) The lien need not be a first lien on the property; however, the lien securing the Title I loan must hold no

less than the second lien position. This requirement shall not apply where the first and second mortgages were made at the same time or the second mortgage was provided by a state or local government agency in conjunction with a downpayment assistance program.

(2) *Property improvement loans of \$7,500 or less.* Any property improvement loan for \$7,500 or less (other than a manufactured home improvement loan) shall be similarly secured if, including any such additional loans, the total amount of all Title I loans on the improved property is more than \$7,500.

(3) *Manufactured home improvement loans.* Manufactured home improvement loans need not be secured.

(b) *Manufactured home loans.* Any manufactured home loan shall be secured by a recorded lien on the home (or lot or home and lot, as appropriate), its furnishings, equipment, accessories, and appurtenances. The lien shall be a first lien, superior to any other lien on that property, and shall be evidenced by a properly recorded financing statement, a properly recorded security instrument executed by the borrower and any other owner of the property, or another acceptable instrument, such as a certificate of title issued by the State and containing a recitation of the lender's lien interest in the manufactured home.

(c) *Recording and perfection of security.* The lender shall assure that the legal description of the property as recited in the security instrument is accurate, and that the security instrument creates a valid and enforceable lien on the property in the jurisdiction in which the property is located. The security instrument shall be recorded and perfected in the manner specified by applicable State law in the State where the property is located.

(d) *Substitution or subordination of security.* The Secretary may approve substitution or subordination of security where the security value will not be impaired or reduced.

(e) *Release of liability or lien.* The lender shall not release the borrower or any